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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/810,858

03/16/2001

Ian J. Forster

4579-116

6167

27820

7590

12/18/2002

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EXAMINER

WIMER, MICHAEL C

ART UNIT

PAPER NUMBER

2821

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/810,858

Applicant(s)

FORSTER ET AL. *AC*

Examiner

Michael C. Wimer

Art Unit

2821

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 1-32 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33-38 and 47-52 is/are allowed.
- 6) ☒ Claim(s) 39-46 is/are rejected.
- 7) ☒ Claim(s) 39 and 40 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 1-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected claims, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

Claim Rejections - 35 USC § 112

2. Claims 39-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claim 39, line 6, the language "said at least movable one arm" is not entirely clear since the original language in line 4 recites "at least one movable arm". The language in line 6 implies something other than what was intended.

Regarding Claim 40, line 1, "wherein antenna array" is unclear because it lacks "said" before "antenna".

Regarding Claim 41, the language "at least antenna" in lines 3 and 5 is not understood. Does this imply one or more than one?

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 41-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brady et al (6166638).

Regarding Claims 41 and 46, Brady et al show in Fig. 8 shows a method of communicating with stacked objects 71-73 containing wireless communication devices comprising the steps of activating a switch to provide a coupling to at least one antenna in an array, where the interrogator 82 has at least one antenna and the interrogator must be turned on to radiate the beam therefrom; exciting the at least one antenna with energy, and radiating the energy from the at least one antenna to the stacked objects, where the interrogator detects at least one beam from the objects 71-73. It is obvious to the skilled artisan that the interrogator must be switched on to radiate the energy/beam at the objects 71-73. It would also have been obvious to the skilled artisan that the antenna of the interrogator may be part of an array antenna.

Regarding Claim 42, low energy is provided as recited.

Regarding Claim 43, high energy is provided as recited. In both cases, the energy level radiated is relative.

Regarding Claim 44, the energy is reflected back so the interrogator can compare the signals from the transponders.

Regarding Claim 45, it would have been obvious to the skilled artisan that the height of the objects is determined by receiving energy by the highest transponder.

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Allowable Subject Matter

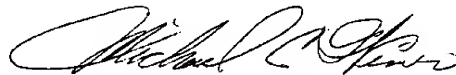
5. Claims 33-38 and 47-52 are allowed.

6. Claims 39 and 40 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Wimer whose telephone number is (703) 305-3555. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don K. Wong can be reached on (703) 308-4856. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



Michael C. Wimer
Primary Examiner
Art Unit 2821

MCW
03 December 2002